IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 855/2007
(Devi Lal Vs. State of Rajasthan)

Date of Order : 06/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyaya, public prosecutor accepts notice. With the consent of parties, this criminal miscellaneous petition under Section 482 Cr.P.C. is heard and decided at the admission stage.

By the instant petition under section 482 Cr.P.C. the petitioner has challenged order dated 1.03.2007 passed by Additional Chief Judicial Magistrate, Raisinghnagar (for short 'the trial court' hereinafter) in Criminal Case No. 115/07 arising out of FIR No. 49/07 P.S. Raisinghnagar whereby while allowing the application filed by the petitioner under Section 457 Cr.P.C. seeking interim custody of the tractor No. RJ-13/2R 2608 and the trolley attached thereto, the trial court ordered to release the tractor and

the trolley attached thereto in favour of the petitioner provided the petitioner furnishes a bank guarantee in the sum of Rs.50,000/-. Hence, this criminal misc. petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that even according to the FIR the wood carried in the tractor trolley was Kikar i.e. Babul which has been exempted from the forest produce by Notification dated 19.1.1991 issued by the State Government.

Rule 3 of the Rules, 1957 pertains to exemption from forest produce and provides that in exercise of the powers conferred under the proviso to rule 2 of the Rules, 1957, the State Government exempts transportation of forest produce of the following species for destination within the State of Rajasthan; namely Eucalyptus, Su-Babul, Ardu, Vilaiti Babul, Israeli Babul, Deshi Babul and Shisham.

Learned counsel submits that on similar facts, this Court in Naresh Vs. State of Rajasthan 2006 (3) CJ (Raj.) Cr., 1468 modified the condition of bank guarantee to the extent of furnishing a personal bond along with one surety.

I have carefully gone through the FIR. In the FIR, it has been stated that Kikar wood was being carried in the tractor trolley. In view of the Rule 3 of the Rules of 1957 and the fact that the

State Govt. itself exempted Eucalyptus, Su-babul, Ardu, Vilaiti Babu, Israeli Babul, Deshi Babul and Shisham and Kikar is Deshi Babul, therefore, at this stage, it cannot be said that the wood carried in the said tractor trolley falls within the definition of forest produce. In view of the decision of this Court in Naresh Vs. State of Rajasthan (supra) the criminal misc. petition deserves to be allowed.

In the result, the criminal misc. petition is allowed and the order impugned dated 1.03.2007 passed by the Additional Chief Judicial Magistrate, Raisinghnagar is modified to the extent that instead of giving bank guarantee of Rs. 50,000/-, the tractor and the trolley attached thereto in question shall be released in favour of the petitioner on Supurdinama on his furnishing a personal bond in the sum of Rs. 50,000/- along with one surety in the like amount to the satisfaction of the trial court with the stipulation therein that during the pendency of the criminal case, neither alienate nor transfer the said tractor and the trolley and keep it in good condition and he will produce the tractor and the trolley in question as and when called upon to do so.

(H.R.PANWAR),J.

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